

DeMarco•Mitchell, PLLC

Robert T. DeMarco
Michael S. Mitchell
1255 West 15th St., 805
Plano, TX 75075
T 972-578-1400
F 972-346-6791

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

Case No.: 17-40662-BTR-11

**NIGHT HORSE CO., LLC,
45-5064755
8331 Thatcher Road
Argyle, TX 76226**

Chapter: 11

Debtor.

**DEBTOR'S EMERGENCY MOTION FOR ORDER AUTHORIZING
THE INTERIM AND FINAL USE OF CASH COLLATERAL**

NOTICE

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

**TO THE HONORABLE BRENDA T. RHOADES
CHIEF UNITED STATES BANKRUPTCY JUDGE:**

COMES NOW, Night Horse Co., LLC, Debtor and Debtor in possession in the above-styled and numbered cases (the "Debtor"), and files this *Night Horse Co., LLC's, Emergency Motion for Order Authorizing the Interim and Final Use of Cash Collateral* by and through the undersigned attorney. Debtor requests the entry of an interim order substantially in the form attached hereto as Exhibit "A" (the "Interim Order") and a final order (the "Final Order", and in conjunction with the Interim Order, the "Cash Collateral Orders"), pursuant to 11 U.S.C. §§ 105, 361, and 363 and Federal Rules of Bankruptcy Procedure 4001 and 9014: (a) authorizing Debtor

to use the cash collateral of the Secured Lender (defined *infra*) and granting adequate protection thereto; and (b) prescribing the form and manner of notice and setting the time for the final hearing on this Motion (the “Final Hearing”). The facts and circumstances supporting this Motion are set forth in the Affidavit of Randall W. Trost (the “Trost Affidavit”), filed concurrently herewith. In support thereof Debtor respectfully shows the Court as follows:

I. JURISDICTION

1. The Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §1334(b) and the standing order of reference of the District Court. This matter is a core proceeding. 28 U.S.C. §§ 157(b)(1), (b)(2)(M).

2. Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105, 361 and 363 of title 11 of United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and LBR 4001 of the United States Bankruptcy Court for the Eastern District of Texas (the “Court”).

II. BACKGROUND

A. Procedural History

4. This case was commenced by the filing of a voluntary petition under Chapter 11 of the United States Bankruptcy Code on March 31, 2017 (the “Petition Date”).

5. No trustee or examiner has been appointed, and no official committee of creditors has yet been established.

B. Business History and Operations

6. Debtor is a Texas limited liability company which owns and operates a signage and vehicle wrap production and design facility in Carrollton, Texas.

7. Debtor is currently headquartered in Argyle, Texas, and conducts business nationally.

8. Debtor was acquired by Randall W. Trost and Kim L. Trost (husband and wife) (the "Principals") on July 6, 2012, from Banner Express II, Inc., for the sum of \$3,000,000.

C. Secured Lenders

9. In accord with Bankruptcy Rule 4001(b)(1)(B)(i) and (iii), Debtor's secured creditors¹ that may have filed a UCC-1 financing statement in order to perfect a security interest in personal property, are as follows:

LENDER	COLLATERAL
JP Morgan Chase Bank, NA. Collateral Management Small Business P.O. Box 33035 Louisville, KY 40232-9891	All Inventory, Chattel Paper, Accounts, Equipment and General Intangibles; whether any of the foregoing is owned now or acquired later, all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).
Original Loan Date: July 6, 2012	
Maturity Date: June 6, 2022	
Estimated Balance: \$1,215,002.28	
Original Balance: \$1,618,100.00	
Obligor(s): Night Horse Co., LLC	
Guarantor(s): Principals Night Horse Properties, LLC	
UCC-1 Filed: July 10, 2012	
Continuation Filed	January 12, 2017
JP Morgan Chase Bank, NA. 1200 West University Drive Denton, TX 76201	All Inventory, Chattel Paper, Accounts, Equipment and General Intangibles; whether any of the foregoing is owned now or acquired later, all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).
Appears to be duplicative of above (Different Address)	
UCC-1 Filed: September 28, 2012	

10. JP Morgan Chase, NA, asserts it is secured by first priority liens on and security interests in substantially all of Debtor's personal property.

¹ Premised upon the UCC-1 filings and other related security documents reviewed to date of the Debtor.

11. As described in the Trost Declaration, in the normal course of business, Debtor uses cash on hand and cash flow from operations to fund working capital, capital expenditures, material acquisition, and for other general corporate purposes. An inability to use these funds during the chapter 11 cases would cripple Debtor's business operations. Indeed, Debtor must use its cash to, among other things, continue the operation of the business in an orderly manner, maintain business relationships with vendors, suppliers and customers and satisfy other working capital and operation needs—all of which are necessary to preserve and maintain Debtor's going-concern value and, ultimately, effectuate a successful reorganization.

III. RELIEF REQUESTED

12. By this Motion and pursuant to 11 U.S.C. §§ 105, 361 and 363 of the Bankruptcy Code and Bankruptcy Rules 4001 and 9014, the Debtor requests that the Court grant the following relief:

- a. Authorize Debtor, **on an interim basis**, pursuant to section 363(c) of the Bankruptcy Code, to use proceeds of assets on which JP Morgan Chase, NA, (the "Secured Lender") asserts a lien and security interest (the "Cash Collateral")² in accord with the budget attached hereto as Exhibit "2" (the "Budget");
- b. Authorize Debtor, **on an interim basis**, pursuant to sections 361 and 363 of the Bankruptcy Code, to provide the adequate protection described herein to the Secured Lender as regards any diminution in value of the Secured Lender's interest in the Collateral as existing on the Petition Date ("Prepetition Collateral"), whether from the use of Cash Collateral or the use, sale, lease, depreciation, or decline in value of said collateral;

² The Debtor does not hereby admit or consent to the validity, priority, extent or enforceability of the liens asserted by Secured Lender and hereby reserves all rights with respect thereto.

c. Schedule the Final Hearing pursuant to Bankruptcy Rule 4001 no later than fourteen (14) days after the entry of the Interim Order, to consider whether the Secured Lender has a valid and perfected security interest in the assets of the Debtor.

IV. BASIS FOR RELIEF

A. Immediate Need for Use of Cash Collateral

13. Pursuant to Bankruptcy Rule 4001(b)(2), the Court may conduct a preliminary cash collateral hearing within fourteen (14) days of the Petition Date if the relief requested is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

14. Debtor has an immediate need for the use of Cash Collateral pending a final hearing on this Motion. As of the Petition Date, Debtor lacks sufficient unencumbered cash to fund its business operation.

15. Without the use of Cash Collateral, Debtor will have no ability to operate the business. Debtor will not be able to pay its vendors and its vendors will likely cease to provide goods and services to Debtor on credit. Debtor will not be able to fund its payroll. ATR will not be able to pay professionals necessary for the successful reorganization of its business. Finally, Debtor will not be able to service the needs of its customers. All of these outcomes will cause immediate and irreparable harm to the Debtor bankruptcy estate.

16. Debtor's ability to finance its operations and the availability to the Debtor of sufficient working capital and liquidity through the use of Cash Collateral is vital to the confidence of its employees, suppliers, and customers and to the preservation and maintenance of the going-concern value and other values of the bankruptcy estate. Debtor, therefore, seeks immediate authority to use the Cash Collateral as set forth in the Motion and

in the Interim Cash Collateral Order to prevent immediate and irreparable harm to its bankruptcy estate pending the Final Hearing pursuant to Bankruptcy Rule 4001(c).

17. Debtor has formulated a Budget for the use of Cash Collateral from the Petition Date through two weeks (14 days) thereafter. Debtor believes the Budget includes all reasonable, necessary and foreseeable expenses to be incurred in the ordinary course of business during the subject time period so as to avoid immediate and irreparable harm to the bankruptcy estate pending a final hearing.

18. Accordingly, Debtor seeks to use Cash Collateral existing on or after the Petition Date that may be subject to Secured Lender's interest in the Prepetition Collateral. As of the Petition Date, Debtor lacks sufficient unencumbered cash to fund their business operations, except through its use of the Cash Collateral.

19. If approved by this Court, Debtor's right to use Cash Collateral under the terms of the Interim Order will commence on the date of the entry of the Interim Order and expire on the earlier of: (a) the entry of a subsequent interim order; or (b) the entry of the Final Order.

B. Adequate Protection

20. In consideration for the interim use of cash collateral, and as adequate protection for any diminution of the interest of the Secured Lender in the Prepetition Collateral, Debtor hereby tenders to the Secured Lender, *to the extent the Secured Lender may hold valid, perfected and unavoidable security interests in the Prepetition Collateral* without any requirement to file any documents to perfect that interest, additional and replacement security interests and liens (the "Replacement Liens") as follows:

The granting of postpetition security interests equivalent to a lien granted under sections 364(c)(2) and (3) of the Bankruptcy Code, as applicable, in and upon the Debtor's personal property and the Cash Collateral, if any, whether such property was

acquired before or after the Petition Date.

21. In addition to the Replacement Liens, the Secured Lenders are adequately protected as a result of the continued business operations. But for the continued operation of Debtor, it will be forced to liquidate its assets absent the added value provided by a going concern.

C. Request for Final Hearing

22. Pursuant to Bankruptcy Rule 4001(b)(2), ATR requests that this Court set a date for the Final Hearing that is as soon as practicable, but in no event later than fourteen (14) days following the entry of the Interim Order, and fix the time and date prior to the Final hearing for parties to file objections to this Motion.

V. BANKRUPTCY RULE 4001(B)

23. The Debtor submits that the facts set forth in the Trost Affidavit filed contemporaneously herewith establish that "the relief requested herein is necessary to avoid immediate and irreparable harm" to the Debtor. Bankruptcy Rule 4001(b)(2). Accordingly, Bankruptcy Rule 4001 is satisfied.

VI. NOTICE

24. Bankruptcy Rules 4001 and 9014 generally require that any proceeding to use cash collateral be made only upon Motion and on notice to: (1) any entity that has an interest in the Cash Collateral; (2) a Committee that may be appointed under the Bankruptcy Code (11 U.S.C. § 1102) or, if no such committee is appointed, on the twenty largest unsecured creditors; and (3) such other entities as the Court may direct.

25. Notice of this Motion has been given via email and/or facsimile transmission to: (1) the Office of the United States Trustee for the Eastern District of Texas; and (2) the Secured

Lender. Each of Debtor's unsecured creditors and any additional parties identified on the attached Mailing Matrix were served via US Mail.

WHEREFORE, the Debtor respectfully requests this Court enter an Interim Order on an emergency basis granting the relief requested herein, establishing a date and time for the Final Hearing, and providing for such other and further relief to which the Debtor may be justly entitled.

Respectfully submitted,

Dated: March 31, 2017

/s/ Robert T. DeMarco
DeMarco•Mitchell, PLLC
Robert T. DeMarco, Texas Bar No. 24014543
Email robert@demarcomitchell.com
Michael S. Mitchell, Texas Bar No. 00788065
Email mike@demarcomitchell.com
1255 W. 15th Street, 805
Plano, TX 75075
T 972-578-1400
F 972-346-6791
Proposed Counsel for Debtor and Debtor in Possession

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that true and correct copies of the foregoing pleading and all attachments were served upon all parties listed below in accordance with applicable rules of bankruptcy procedure on this 31st day of March, 2017. Where possible, service was made electronically via the Court's ECF noticing system or via facsimile transmission where a facsimile number is set forth below. Where such electronic service was not possible, service was made via regular first class mail.

DEBTOR

Night Horse Co., LLC,
8331 Thatcher Road
Argyle, TX 76226

UNITED STATES TRUSTEE

Office of the United States Trustee
110 N. College Avenue, Suite 300
Tyler, TX 75702
Email: USTPRegion06.TY.EDF@usdoj.gov

ADDITIONAL PARTIES IN INTEREST AND/OR PARTIES REQUESTING NOTICE

JP Morgan Chase
Collateral Management Small Business
P.O. Box 33035
Louisville, KY 40232-9891

JP Morgan Chase
c/o Brian A. Kilpatrick
Jackson Walker, LLP
2323 Ross Avenue, 600
Dallas, TX 75201
Fax: 214-661-6656
Email: bkilpatrick@jw.com

JP Morgan Chase
1200 West University Drive
Denton, TX 76201

SEE ATTACHED MATRIX

/s/ Robert T. DeMarco
DeMarco•Mitchell, PLLC
Robert T. DeMarco, Texas Bar No. 24014543
Email robert@demarcomitchell.com
Michael S. Mitchell, Texas Bar No. 00788065
Email mike@demarcomitchell.com
1255 W. 15th Street, 805
Plano, TX 75075
T 972-578-1400
F 972-346-6791

Banner and Sign Express

	Next 15 days	April	May	June
Ordinary Income/Expense				
Income				
Merchandise Sales	16,000.00	36,000.00	42,500.00	40,000.00
Total Income	16,000.00	36,000.00	42,500.00	40,000.00
Cost of Goods Sold				
COGS	4,000.00	9,200.00	9,200.00	9,200.00
Freight and Shipping	0.00	0.00	0.00	0.00
Merchant Account Fees	240.00	540.00	637.50	600.00
Total COGS	4,240.00	9,740.00	9,837.50	9,800.00
Gross Profit	11,760.00	26,260.00	32,662.50	30,200.00
Expense				
Amortization Expense	0.00	0.00	0.00	0.00
Automobile Expense				
Fuel Service	125.00	225.00	225.00	225.00
Tolls	125.00	200.00	200.00	200.00
Total Automobile Expense	290.00	505.00	505.00	505.00
Bank Service Charges	87.50	175.00	175.00	175.00
Contract Labor	0.00	0.00	0.00	0.00
Depreciation Expense	0.00	0.00	0.00	0.00
Dues and Subscriptions	250.00	500.00	500.00	500.00
Equipment Rental	75.00	150.00	150.00	150.00
Insurance Expense				
General Liability	850.00	850.00	850.00	850.00
Health Insurance	145.00	145.00	145.00	145.00
Workman's Compensation	225.00	225.00	225.00	225.00
Total Insurance Expense	1,220.00	1,220.00	1,220.00	1,220.00

	Next 15 days	April	May	June
Interest Expense		3,000.00	3,000.00	3,000.00
Licenses and Permits	125.00	150.00	150.00	150.00
Meals and Entertainment	0.00	50.00	50.00	50.00
Office Supplies	125.00	200.00	200.00	300.00
Payroll Expenses	0.00	0.00	0.00	0.00
Postage and Delivery	150.00	300.00	600.00	600.00
Professional Fees				
Accounting Fees	0.00	150.00	150.00	150.00
Consulting	100.00	100.00	100.00	100.00
Legal Fees	0.00	0.00	0.00	0.00
Total Professional Fees	100.00	250.00	250.00	250.00
Rent Expense	2,000.00	3,610.00	3,610.00	3,610.00
Repairs and Maintenance	0.00	0.00	0.00	10,000.00
Salaries/Wages	4,700.00	9,400.00	9,400.00	11,750.00
Taxes	0.00	0.00	0.00	0.00
Futa Tax	0.00	150.00	0.00	0.00
Medicare	250.00	250.00	250.00	250.00
Property Taxes	0.00	0.00	0.00	0.00
Sales Tax Paid	0.00	2,160.00	2,550.00	2,400.00
Social Security	1,000.00	1,000.00	1,000.00	1,000.00
Suta	0.00	125.00	0.00	0.00
Total Taxes	1,250.00	3,685.00	3,800.00	3,650.00
Telephone Expense	225.00	225.00	225.00	225.00
Travel	0.00	0.00	0.00	0.00
Utilities	500.00	800.00	1,600.00	1,800.00
Total Expense	11,097.50	24,220.00	25,435.00	37,935.00
Net Ordinary Income	662.50	2,040.00	7,227.50	-7,735.00
Net Income	662.50	2,040.00	7,227.50	-7,735.00

Label Matrix for local noticing

0540-4

Case 17-40662

Eastern District of Texas

Sherman

Fri Mar 31 19:03:56 CDT 2017

Activity Software

2977 Highway K

#247

O'Fallon, MO 63368-7862

AT&T Mobility

PO Box 6463

Carol Stream, IL 60197-6463

AXA Equitable

Box 371405

Pittsburgh, PA 15250-7405

Attorney General of Texas

Taxation Division - Bankruptcy

Box 12548 Capitol Station

Austin, TX 78711-2548

Atmos Energy

PO Box 790311

St. Louis, MO 63179-0311

Attorney General of Texas

Bankruptcy Reporting Contact

OAG/CSD/Mail Code 38

P.O. Box 12017

Austin, TX 78711-2017

Capital CDC
1250 S. Capital of Texas Highway
Building 1, Suite 600
Austin, TX 78746-6380

Cardmember Service

PO Box 94014

Palatine, IL 60094-4014

Carrollton-Farmers Branch ISD

C/O Andrea Sheehan

Law Offices of Robert E. Luna, PC

4411 North Central Expressway

Dallas, TX 75205-4210

Chase
PO Box 78039
Phoenix, AZ 85062-8039City of Carrollton
PO Box 115120
Carrollton, TX 75011-5120Dallas County
C/O Melissa L. Palo
Linebarger, Goggan, Blair & Sampson, LLP
2777 N. Stemmons Fwy., Suite 1000
Dallas, TX 75207-2328Robert T. DeMarco
DeMarco-Mitchell, PLLC
1255 West 15th St., 805
Plano, TX 75075-7225Internal Revenue Service
Centralized Insolvency Operations
PO Box 7346
Philadelphia, PA 19101-7346Kim Trost
8331 Thatcher Road
Argyle, TX 76226-7356Nationwide Allied Insurance
PO Box 514540
Los Angeles, CA 90051-4540Night Horse Co., LLC
8331 Thatcher Road
Argyle, TX 76226-7356Night Horse Properties, LLC
2774 E. Trinity Mills Road, 100
Carrollton, TX 75006-3350Progressive Waste Solutions
PO Box 650592
Dallas, TX 75265-0592Randall Trost
8331 Thatcher Road
Argyle, TX 76226-7356Reliant Energy
PO Box 650475
Dallas, TX 75265-0475SEC
100 F Street, NE
Washington, DC 20549-2001Spectrum VOIP
PO Box 250588
Plano, TX 75025-0588Texas Comptroller of Public Accounts
C/O Office of the Attorney General
Bankruptcy-Collections Division
PO Box 12548
Austin, TX 78711-2548Texas Comptroller of Public Accounts
Office of the Attorney General
Bankruptcy Collections Div.
P.O. Box 12548, MC-008
Austin, TX 78711-2548Travelers
PO Box 660317
Dallas, TX 75266-0317U.S. Attorney General
Department of Justice
Main Justice Building
10th & Constitution Ave., NW
Washington, DC 20530-0001

US Trustee
 Office of the U.S. Trustee
 110 N. College Ave.
 Suite 300
 Tyler, TX 75702-7231

United Parcel Service
 PO Box 7247-0244
 Philadelphia, PA 19170-0001

United States Attorney
 110 North College Ave., Ste. 700
 Tyler, TX 75702-0204

United States Trustee
 110 North College
 Suite 300
 Tyler, TX 75702-7231

United States Trustee
 110 North College Ave., Ste. 300
 Tyler, TX 75702-7231

VPI, Inc. - Steve Vogds
 5 Mission Hills Drive
 Frisco, TX 75034-6876

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d) Internal Revenue Service -
 Centralized Insolvency Operations
 PO Box 7346
 Philadelphia, PA 19101-7346

(d) SEC
 100 F. Street, NE
 Washington, DC 20549-2001

	End of Label Matrix
Mailable recipients	35
Bypassed recipients	2
Total	37